In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 537

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 21–22) is reported at 375 F. 2d 1011. The Board's Decision and Order in the unfair labor practice case (J.A. 2–10)[1] is reported at 154 N.L.R.B. 1415. The related Decision and Determination of Dispute (J.A. 10–21) is reported at 151 N.L.R.B. 1.

JURISDICTION

The decision of the court of appeals was rendered on April 28, 1967 (Pet. 21), a petition for rehearing was denied on May 18, 1967 (Pet. 23), and a decree

[1] "J.A." refers to the Joint Appendix filed in the court below.

was entered on May 31, 1967 (Pet. 24–25). The petition for a writ of certiorari was filed on August 25, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Section 8(b)(4)(D) of the National Labor Relations Act makes it an unfair labor practice for a union to exert strike pressure against an employer in order to compel him to assign particular work to one group of employees rather than to another group. Section 10(k) provides that, "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of" Section 8(b)(4)(D), "the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen." The question presented is whether, in the circumstances of this case, the Board properly awarded disputed work to employees represented by Local 4889, United Steelworkers of America, rather than to Local 1291, International Longshoremen's Association.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at pp. 19–20 of the petition.

STATEMENT

At its Fairless Works in Morrisville, Pennsylvania, the United States Steel Corporation ("the Company") maintains facilities for the manufacture and handling of steel products, including a private

docking area with equipment for loading and unloading ships calling at the plant. Since the early 1950's the dock has been used primarily for the unloading of ore (J.A. 12; 35, 37, 51, 77). This work has always been performed by Company employees working at the Fairless Works (J.A. 12; 37–38, 51), who, since 1953, have been represented by Local 4889, United Steelworkers of America (the "Steelworkers") (J.A. 16; 150–151, 152–153). Petitioner Local 1291, International Longshoremen's Association ("Local 1291") has never represented any plant employees, although some of them have been continually engaged in unloading ore ships (J.A. 16; 37–38, 77).

In January 1964, the Company began to use a converted oil tanker, the *S.S. Columbia*, to ship steel billets (semi-finished steel products) from its Fairless Works to its plant in Pittsburg, California. Plant employees represented by the Steelworkers were assigned to load the *Columbia*. (J.A. 12; 26–27.)

In March 1964, Local 1291 advised representatives of the Steelworkers that unless Local 1291 was given the work of loading the *Columbia* its members would picket the plant the next time the ship docked (J.A. 62–63, 115). On April 20, the *Columbia* arrived at Fairless and was met by pickets from Local 1291. On several occasions there was mass picketing at the gates used by employees to enter the plant. Traffic into the plant was impeded, and some employees were unable to report to work. (J.A. 5–6, 14; 24, 38–39, 41–43.) The pickets carried signs and distributed circulars stating that the Company was

forcing steelworkers to do longshoremen's work (J.A. 5, 14; 25, 148–149, 151–152).

Upon the Company's charge that Local 1291 had violated Section 8(b)(4)(D) of the Act, the Board, pursuant to Section 10(k), proceeded to determine the underlying jurisdictional dispute. The Board found the following facts relevant to the dispute:

1. The billets to be loaded aboard the *Columbia* are first taken by magnet cranes to a bundling area and assembled in bundles or "lifts" of approximately 15 tons. The lifts are then hoisted by crane to an open railway or "gondola" car. The cars are moved through the railroad sidings to the dock area. At dockside three gantry or "whirly cranes" are used to transfer the steel billets to the *Columbia*. (J.A. 13; 53–56.)

2. One gantry crane is assigned to each of the *Columbia*'s three hatches. The craneman lowers the beam to the gondola cars, where employees known as "hookers" attach a load of billets to the beam; then, the craneman lifts the load, swinging it above the open hatch, and lowers the load into the ship's hold with the aid of a signalman standing on deck. In the hold, other employees position the load manually and unhook it. (J.A. 13–14; 31–32, 54–57.)

3. Three crews, comprising 8 to 12 men each, are involved in loading the *Columbia* (J.A. 14; 36). When the *Columbia* is not being loaded, the crewmen and hookers work elsewhere in the plant (J.A. 17; 77–78, 80).

4. Employees represented by Local 1291 can be hired by the Company only through a stevedoring firm,

at "shape-up" points in Philadelphia, Pennsylvania, more than 30 miles away. Hiring would have to be on a daily basis each time the *Columbia* was to be loaded, with the Company bearing the expenses of transportation (J.A. 17; 120–121, 123–124, 128–129). Members of Local 1291 transported to the plant would remain idle if the *Columbia* were delayed. If the delay lasted for more than four hours, the longshoremen would be paid for that time and then released (J.A. 17; 121). Finally, Local 1291 requires a minimum of 15 men per "gang" when steel is being loaded (J.A. 17; 125–126). In contrast, the Company uses "gangs" of only 8 to 12 employees to load the *Columbia* (J.A. 13; 31, 56–57).

5. Work substantially identical to the loading of the *Columbia* is performed throughout the Fairless Works. Cranemen and hookers are used to move steel from place to place within the plant. (J.A. 14, 17; 154–155, 157–159, 161–163, 167–168, 170–172, 176–177, 181–182, 188–190, 192–194, 196–198, 200–202, 204–205, 208–209.)

The Board compared the skills and training of the employees involved with the nature of the work, and considered the intermittent and routine nature of the work in issue, the efficiency and economy of the Company's operations, and the fact that the loading operation was performed at a private Company dock, adjacent to and integrated with the Company's production area. On the basis of this analysis, it concluded that the employees represented by the Steelworkers were entitled to continue to load the *Columbia*, and thus that Local 1291 could not lawfully compel the

Company to assign such work to its members (J.A. 16–21).

When Local 1291 refused to accept this determination, the Board's General Counsel issued a complaint against it, alleging a violation of Section 8(b)(4)(D) of the Act.[2] The Board upheld the complaint, finding that Local 1291 had induced employees of the Company to engage in a strike or a refusal to work, and had coerced and restrained the Company, with an object of compelling the Company to assign the disputed work to members of Local 1291. The Board ordered Local 1291 to cease and desist from engaging in further violations of Section 8(b)(4)(D) of the Act, and to post appropriate notices. (J.A. 2–9.)

The court below, in a *per curiam* opinion, sustained the Board's findings and enforced its order in full (Pet. 21–22).

ARGUMENT

Section 10(k) of the National Labor Relations Act directs the Board to hear and determine jurisdictional disputes of the kind referred to in Section 8(b)(4)(D), *i.e.*, a "dispute between two or more groups of employees over which is entitled to do certain work for an employer." *National Labor Relations Board* v. *Radio and Television Broadcast Engineers Union*, 364 U.S. 573, 579. The sole question raised by petitioner is whether the court below erred in affirming the propriety of the Board's determination that the Steelworkers union, rather than Local 1291, was

[2] The 8(b)(4)(D) charge (*supra*, p. 4) had been held in abeyance pending the Board's effort to resolve the underlying dispute under Section 10(k).

entitled to certain disputed work. This presents merely an evidentiary issue which does not warrant further review by this Court. *National Labor Relations Board* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502–503. In any event, the facts summarized in the Statement, *supra*, pp. 2–6, show that the Board's findings were fully justified.

Nor is the decision below in conflict with this Court's decision in *Radio Engineers, supra.* Contrary to petitioner's argument, that case does not stand for the proposition "that an agreement among the parties as to work assignments must control" (Pet. 9).[3] The passage cited by petitioner (Pet. 11; 364 U.S. at 577, n. 12) does no more than mention the Board's earlier view to that effect. Elsewhere in its opinion the Court criticizes that view as unduly restrictive of the Board's function in a Section 10(k) proceeding (see 364 U.S. at 579–580).

[3] Petitioner contended before the Board that the Steelworkers had agreed in 1952, more than 10 years before the advent of the *Columbia*, that any future loading of billets would be handled by Local 1291. The Board found that, even assuming the existence of such an agreement, it should not be given controlling weight in view of the other factors favoring the Steelworkers' claim. (J.A. 16.) See *Carpenters District Council of Denver and Vicinity*, 146 N.L.R.B. 1242, 1245–1246.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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